HIGH COURT OF UTTARANCHAL AT NAINITAL.

(Chapter VIII Rule 32 (2) (b)
Description of the Case.

Appeal From Order No. 497 of 2003

Date of Decision : 30th November, 2006

A.F.R. (Approved for reporting)

~~Not approved for reporting.~~

Date : 30.11.2006 Initial of Judge.

Note : Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL, AT NAINITAL

Appeal From Order No. 497 of 2003

1. Jagat Singh S/o Himmat Singh
   R/o Ratanpur, Police Station – Khatima
   District –Udham Singh Nagar

2. Smt. Heera Devi W/o Jagat Singh
   R/o Ratanpur, Police Station – Khatima
   District – Udham Singh Nagar ...Appellants

Versus

1. Sri Niranjan Singh S/o Gander Sing
   R/o Unchi Mahoot, Police Station – Khatima
   District – Udham Singh Nagar

2. The United India Insurance Company Ltd.
   Haldwani, Nainital
   Through ist Regional Manager ...Respondents

Shri B.S. Khanka, learned counsel for the appellants.
Sri D.S. Patni, learned counsel for the respondent No. 2.

JUDGMENT

Coram : Hon'ble Rajeev Gupta, C.J.
Hon'ble J.C.S. Rawat, J.

Per Hon'ble J.C.S. Rawat, J.

1. This appeal, preferred u/s 173 of the Motor Vehicles Act, 1988, is directed against the award dated 25.09.2003, passed by the Motor Accident Claim Tribunal/Addl. District Judge/III Fast Track Court, Udham Singh Nagar in M.A.C. Case No. 167 of 2002 whereby the claim of the claimants was rejected

2. The claimants, Jagat Singh and Smt. Hira Devi had filed a claim petition for compensation of Rs. 4,55,000/- before the Tribunal alleging therein that on 27.05.2002 at about

4:00 p.m. when the claimant-Jagat Singh was sitting as a pillion rider with his maternal brother and coming from Khatima to Ratanpur in scooter bearing No. U.P.–04/B-8584, an offending truck bearing No. U.P. –04A/0329, which was coming from Sitarganj rashly and negligently, hit the scooter resulting in grievous injuries to the claimant-Jagat Singh in his leg. The claimant-Jagat Singh was admitted to the Public Health Centre, Khatima and thereafter he was referred to Pilibhit for further treatment. It is alleged that the claimant-was earning Rs. 5,000/- from his dairy business and agricultural farms at the time of accident.

3. The respondents contested the claim petition and filed their separate written statements. The respondent No.1-Niranjan Singh, in his statement admitted the accident and alleged that the accident occurred due to the negligence of the scooterist. He had pleaded that the accident occurred due to rash and negligent driving of the scooterist as the claimant-Jagat Singh, pillion rider and Vikram Singh-scooterist were in a drunken condition. It was further pleaded that the offending truck was insured with the United India Insurance Company Limited on the date of accident. The respondent No. 2-United India Insurance Company Limited had pleaded in its written statement that the claimant had not impleaded Vikram Singh-who was the owner of the scooter in the claim petition. It was further alleged that the insurance company is not liable to pay the compensation as the offending vehicle was being plied against the condition of the policy.

4. On the basis of the pleadings of the parties, the learned Tribunal framed the necessary issues.

5. After recording the evidence and hearing the parties, the learned Tribunal held that it was not established that the claimant-Jagat Singh sustained injures due to rash and negligent driving of the offending truck. It was further held by the Tribunal that the accident occurred due to rash and negligent driving of the scooterist. At last, it was held that the claimants are not entitled to receive any compensation.

6. Feeling aggrieved by the award, the claimants has filed this appeal before this court.

7. Heard Shri B.S. Khanka, learned counsel for the appellants; Shri Manish Dalakoti-Advocate on behalf of Sri D.S. Patni-Advocate for the respondent No. 2 and perused the record.

8. Learned counsel for the appellant contended that the Tribunal fell in error in holding that the claimant/Jagat Singh could not establish the fact that the driver of the offending truck was rash and negligent at the time of accident. It was further contended that the learned Tribunal had erred in holding that the accident occurred due to the rash and negligent driving of the scooterist in which the claimant/Jagat Singh was sitting as a pillion rider. Learned counsel for the respondents refuted the contention and contended that the accident occurred due to rash and negligent driving of the scooterist as the scooterist-Vikram Singh and the claimant-Jagat Singh were heavily drunken. It was further contended that the claimant-Jagat Singh and the scooterist-Vikram Singh were rash and negligent and were liable for the accident.

9. Perusal of the record reveals that the claimant-Jagat Singh had examined himself as P.W.1 and Sri Prem Singh-PW2 in support of his claim. Jagat Singh is the claimant himself who had deposed in his deposition that the driver of the offending truck was rash and negligent at the time of the accident. He had further denied during the cross examination that he was under the influence of liquor and the scooterist-Vikram Singh was rash and negligent at the time of the accident. He had admitted in his cross examination that he was having a bottle of liquor in his hand at the time of the accident and due to breakage of bottle at the time of accident, the entire liquor fell in his body from where the clothes were giving the alcoholic smell. Prem Singh-PW2 had stated that he is the brother of the claimant-Jagat Singh. He is not the eyewitness of the accident. He had admitted in his cross examination that he reached at the spot after half an hour of the accident. He had further deposed in his cross examination that he inquired about the accident from the scooterist-Vikram Singh who was sitting in the hospital with the claimant-Jagat Singh. Vikram Singh, the scooterist informed him that the accident occurred due to the rash and negligent driving of the vehicle. Thus Prem Singh-PW2 had not given the direct version of the accident. His evidence is based on hearsay evidence which is not admissible. The claimant-Jagat Singh had not examined Vikram Singh-Scooterist in support of his claim. The respondents had examined Jasvinder Singh-DW1, Mukhtiyar Singh-DW2 and Niranjan Singh-DW3 in their support who had claimed that they had seen the aforesaid accident. These witnesses had stated that the scooterist-Vikram Singh was driving the said scooter under the influence of liquor. It was further deposed

that Vikram Singh, the driver of the scooter was driving the scooter rashly and negligently under the influence of liquor. They had further deposed in their evidence that Vikram Singh and claimant-Jagat Singh had also a bottle of liquor in their possession at the time of the accident. All the witnesses were cross examined at length but nothing could be elicited from their cross examination. Hence their evidence cannot be discarded.

10. It is also admitted by the claimant-Jagat Singh that after the accident both the injured namely, Vikram Singh and Jagat Singh-Claimant were immediately shifted to the nearby hospital where they were medically examined and found that both the injured were under the influence of liquor. The Doctor had opined that both the injured were having the smell of liquor from their mouth and breathing. The doctor had further opined that they were heavily drunken. The medical of Vikram Singh and Jagat Singh was conducted on 27.05.2002 immediately after the accident on the same day. Thus the medical evidence further corroborates the evidence of the respondents. The medical certificate produced by the claimant-Jagat Singh falsifies the evidence of the claimant-Jagat Singh that the injured were not under the heavy influence of alcohol at the time of the accident. The manner in which the accident is said to have been taken place does not leave any room for doubt about the negligence of the scooterist-Vikram Singh which led to the accident resulting severe injures on the persons of the claimant-Jagat Singh and scooterist-Vikram Singh.

11. We, therefore, do not find any infirmity in the findings recorded by the learned Tribunal. The learned Tribunal was

justified in holding that the driver of the offending truck was not rash and negligent at the time of the accident. The scooterist-Vikram Singh and the claimant-Jagat Singh were under the heavy influence of liquor and they were responsible for the accident. So the claimant-Jagat Singh is not entitled for any claim from the respondents.

12. Learned counsel for the claimant-Jagat Singh further prayed that he may be given liberty to file the claim petition against the scooterist-Vikram Singh for the compensation. It is made clear that the claimant-Jagat Singh will be at liberty to file the claim petition for the compensation against the scootersit-Vikram Singh.

13. In view of the above facts and circumstances, we are in agreement with the findings recorded by the learned Tribunal. The appeal filed by the claimant-Jagat Singh devoids of merit & is liable to be dismissed.

14. Accordingly, the appeal filed against the impugned award dated 25.09.2003, passed in M.A.C. Case No. 167 of 2002 is hereby dismissed.

15. No order as to costs.

(J.C.S. Rawat, J.) (Rajeev Gupta, C.J.)

Dated 30th November, 2006
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